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*Attorneys for Defendants Xylem, Inc.
and Xylem Dewatering Solutions, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

DEAN MILLS,

Plaintiff,

-vs-

XYLEM, INC.; XYLEM DEWATERING
SOLUTIONS, INC.; and JOHN DOES
1-5,

Defendants.

Cause No. _____

NOTICE OF REMOVAL

This Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1332 because Defendants Xylem Inc. and Xylem Dewatering Solutions, Inc. (collectively “Xylem”) and Plaintiff Dean Mills (“Plaintiff”) are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

Accordingly, pursuant to 28 U.S.C. §§ 1441 and 1446, Xylem files the following Notice of Removal of the above-captioned action from the Montana First Judicial District Court, Lewis and Clark County, where it is now pending, to the United States District Court for the District of Montana, Helena Division.

FACTUAL BACKGROUND

1. Plaintiff initiated this action on July 9, 2020 by filing a Complaint in the Montana First Judicial District Court, Lewis and Clark County, designated as *Mills v. Xylem Inc.*, Cause No. CDV-2020-1064.

2. Xylem received a copy of the Notice of Lawsuit and Request for Waiver of Service and Complaint on July 20, 2020, which is the first date upon which it had actual notice of the pending action. Copies of the Notice of Lawsuit and Request for Waiver of Service and Complaint are attached hereto as Exhibit 1.

3. Plaintiff's employment with Xylem terminated on September 24, 2019, and Plaintiff claims he was wrongfully discharged under Mont. Code Ann. § 39-2-904(1)(b). Complaint, ¶¶ 8, 11. Plaintiff requests an award of lost wages, fringe benefits, attorney fees, and interest. *Id.*

4. Plaintiff is Montana citizen residing in Helena, Montana. *Id.*, ¶ 3.

5. Xylem Inc. is incorporated in Indiana and its principal place of business is in New York. *Id.*, ¶ 4.

6. Xylem Dewatering Solutions, Inc. is incorporated in New Jersey and

its principal place of business is in New Jersey. *Id.*, ¶ 5.

LEGAL ANALYSIS

A. Applicable Legal Standards

7. A civil case brought in a state court may be removed by a defendant to federal court if it could have been brought there originally. 28 U.S.C. § 1441(a).

8. A federal district court has original “diversity” jurisdiction where the suit is between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of costs and interest. 28 U.S.C. § 1332(a).

9. A corporation is considered a citizen of the state in which it is incorporated and of the state in which it has its principal place of business/corporate headquarters or “nerve center.” 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1185-86 (2010).

10. To determine the amount in controversy in a removed action, the “district court may consider the facts in the removal petition, and may ‘require parties to submit summary-judgment-type evidence relevant to the amount in controversy at the time of removal.’” *Hiskey v. Ins. Co. of the West*, No. CV 18-38-GF-BMM, 2018 U.S. Dist. LEXIS 121830, at *5 (D. Mont. Jul. 20, 2018), quoting *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

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B. The Parties Are Citizens Of Different States

11. Plaintiff is a citizen of the State of Montana.

12. Xylem Inc. is a citizen of Indiana and New York. Xylem Dewatering Solutions, Inc. is a citizen of New Jersey.¹

C. The Amount In Controversy Exceeds \$75,000.00

13. Plaintiff seeks to recover lost wages, fringe benefits, attorney fees, and interest. Complaint, p. 3.

14. At the time of his separation from employment on September 24, 2019, Plaintiff's annual salary was \$189,440.00. Exhibit 2, Declaration of Jeanne Spinner ("Spinner Dec."), ¶ 5.

15. Because Plaintiff seeks damages "to the full extent permitted by law," which is four years pursuant to Mont. Code Ann. § 39-2-905, the amount in controversy exceeds \$75,000.00.

D. Xylem Has Met The Procedural Requirements For Removal

16. A true and correct copy of the Notice of Lawsuit and Request for Waiver of Service and Complaint filed in the Montana First Judicial District Court, Lewis and Clark County, is attached to this Notice of Removal as Exhibit 1.

17. The Montana First Judicial District Court, Lewis and Clark County, in

¹ Plaintiff has named fictitious John Doe defendants. "In determining whether a civil action is removable ... the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1).

which this action was commenced, is within this Court's district and division. L.R. 1.2(4).

18. This Notice of Removal is filed within 30 days of Xylem's receipt of the initial pleading by service or otherwise, setting forth the claim for relief upon which this action is based and upon which it could first be ascertained that this case is removable, and is timely filed pursuant to 29 U.S.C. § 1446.

19. Xylem preserves all other bases for removal of this action to this Court.

20. A Notice of Filing of this Notice of Removal will be filed with the Montana First Judicial District Court, Lewis and Clark County, and a copy of this Notice of Removal will be served upon Plaintiff's counsel.

WHEREFORE, Xylem hereby removes the above-described action now pending in the Montana First Judicial District Court, Lewis and Clark County, to the United States District Court for the District of Montana, Helena Division.

DATED this 18th day of August, 2020.

Faure Holden Attorneys at Law, PC

/s/ Katie R. Ranta

Katie R. Ranta

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served upon the following by the means designated below on the 18th day of August, 2020.

Philip A. Hohenlohe Law Office of Philip Hohenlohe, PLLC P.O. Box 1959 Helena, MT 59624 phil@hohenlohelaw.com <i>Attorney for Plaintiff</i>	<input checked="" type="checkbox"/> CM/ECF <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Angie Sparks Clerk of District Court Lewis and Clark County P.O. Box 158 Helena, MT 59624-0158	<input type="checkbox"/> CM/ECF <input checked="" type="checkbox"/> U. S. Mail <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

/s/ Katie R. Ranta

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